

## SUMMARY BIOGRAPHY

**Don Philbin, J.D., M.B.A., LL.M.**, is an AV-rated attorney-mediator with extensive business, legal, and negotiation experience and education. He has resolved disputes and crafted deals for more than two decades as a business and commercial litigator, general counsel, and president of technology-related companies. Don holds a Masters of Law degree from Pepperdine's top-ranked Straus Institute for Dispute Resolution, where he is now an adjunct professor, has been trained and published at Harvard's Program on Negotiation, is an elected Fellow of the International Academy of Mediators, American Academy of Civil Trial Mediators, and National Academy of Distinguished Neutrals, and was one of the first U.S. mediators certified under the international standards established by the International Mediation Institute. He has mediated hundreds of individual and class matters in a wide variety of substantive areas and serves as a neutral on several panels, including CPR's Panels of Distinguished Neutrals. Don has published widely in the field, is Co-Chair of the ABA Dispute Resolution Section's Negotiation Committee, and a member of the ADR Section Council of the State Bar of Texas. Mr. Philbin is listed in THE INTERNATIONAL WHO'S WHO OF COMMERCIAL MEDIATION, THE BEST LAWYERS IN AMERICA, TEXAS SUPER LAWYERS, and THE BEST LAWYERS IN SAN ANTONIO. His firm is listed in the U.S. News and Best Lawyers "Best Law Firm" survey and the BAR REGISTER OF PREEMINENT LAWYERS.

## NEGOTIATION, MEDIATION AND ARBITRATION TRAINING

- Straus Institute for Dispute Resolution, Pepperdine University School of Law (ranked No. 1 in the country by *U.S. News and World Report* more than six times, including years of LL.M. training) (TADRA §154.052(a))
  - Over 600 hours of classroom and practicum training culminating in a 28-academic unit LL.M. degree
  - Academic Courses: Commercial and International Dispute Resolution, Mediation, Negotiation and Settlement Advocacy, Arbitration, International Investment Disputes, Selected Issues in Dispute Resolution (Labor Disputes), Third-Party Processes, Faith-Based Diplomacy and International Peacemaking, Communication and Conflict, Social Psychology of Conflict
  - Professional Skills Courses: Advanced Mediation (2006); Improvisational Mediation (2007); Mediating the Complex Case (2008); Mediating Complex Construction Disputes (2009); Neuro-Collaboration: How New Perspectives from the Neurosciences Can Enhance Your Collaborative Conflict Resolution Skills (2009); Domestic Relations Dispute Resolution (2010)
- Program on Negotiation at Harvard Law School
  - The Program on Negotiation for Senior Executives (2007)
  - Dealing with Difficult People and Difficult Situations (2007)
- Dispute Resolution Section of the American Bar Association: Advanced Mediation and Advocacy Skills Training (2007); Annual Conferences (2008 – present)
- Association of Attorney-Mediators (Austin 2008; San Antonio 2009)
- Texas Bar CLE: Advanced Mediation: Skills and Techniques (Houston 2009; San Antonio 2009)
- Advanced Commercial Mediation Institute (AAA and ACR) (Austin 2008)

- Global Collaborative Law Council, Civil Collaborative Training (September 2009)
- Securities Arbitration & Mediation Hot Topics (City Bar of New York 2010)
- Advanced Mediation Training Retreat (National Academy of Distinguished Neutrals 2010)
- Austin Dispute Resolution Center, Advanced Family Mediation Training (2007) (TADRA §154.052(b))
- Bexar County Dispute Resolution Center, Group Facilitation Skills Training (2007), Children's Court Training (2010)
- Cambridge Executive Enterprises, Senior Executive Training (MIT Professor John J. Donovan (2002))

## PUBLICATIONS

- *The One Minute Manager Prepares for Mediation: A Multidisciplinary Approach to Negotiation Preparation*, 13 HARVARD NEGOTIATION LAW REVIEW 249 (2008), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/The-One-Minute-Manager-Prepares-for-Mediation-A-Multidisciplinary-Approach-to-Negotiation-Preparation-HarvardNLR1.pdf>; excerpted in Carrie J. Menkel-Meadow et al, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL (Aspen WoltersKluwer, 2<sup>nd</sup> ed. 2010), reprinted in *Securities Arbitration & Mediation Hot Topics 2008: "The" Program for Attorneys, In-House Counsel, Experts, Arbitrators & Mediators*, New York City Bar (2008 & 2010).
- *The Value of Economic Analysis in Preparing for Mediation*, 63 DISPUTE RESOLUTION JOURNAL 49 (April 2008), reprinted in AAA HANDBOOK ON MEDIATION (2d 2010); available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/The-Value-of-Economic-Analysis-in-Preparing-for-Mediation-DRJ.pdf>.
- *Deal or No Deal? Or Perhaps a Better Deal? The Impact of Improved Information*, 25 ALTERNATIVES TO THE HIGH COST OF LITIGATION 177 (Dec. 2007), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Deal-or-No-Deal-Or-Perhaps-a-Better-Deal-The-Impact-of-Improved-Information.pdf>.
- *Decisional Errors – On the Field, On the Bench, In Negotiations*, HARVARD NEGOTIATION LAW REVIEW Online Edition (2009), available at <http://www.hnlr.org/?p=471>
- *Decisional Errors – Why We Make Them and How to Address Them*, 64 DISPUTE RESOLUTION JOURNAL 64 (Nov. 2009 – Jan. 2010), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Decisional-Errors-Why-We-Make-Them-and-How-to-Address-Them-DRJ.pdf>.
- *The Psychology of Bad Economic Decisions*, 7 JAMS DISPUTE RESOLUTION ALERT 1 (Fall 2007), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/The-Psychology-of-Bad-Economic-Decisions-JAMS.pdf>.
- *Comprehensive Trial Preparation Includes ADR Process Design: What Type of Mediator Best Fits This Case?*, 11 CONFLICT MANAGEMENT Newsletter 17 (ABA, Section of Litigation, Fall 2007), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Comprehensive-Trial-Preparation-Includes-ADR-Process-Design-What-Type-of-Mediator-Best-Fits-This-Case-ABA.pdf>, reprinted as *Trial Preparation Includes ADR Process Design: What Type of Mediator Fits Best?*, 9 ABA COMMERCIAL & BUSINESS LIT. 1 (ABA LIT. WINTER 2008).
- *Thankful for Unanswered Prayers? Unconscionability 'Equilibrium'*, 27 ALTERNATIVES TO THE HIGH COST OF LITIGATION 145 (Oct. 2009), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Thankful-for-Unanswered-Prayers-Unconscionability-Equilibrium.pdf>.
- *Trends in Litigating Arbitration: Using Motions to Compel Arbitration and Motions to Vacate Arbitration Awards*, 76 DEFENSE COUNSEL JOURNAL 338 (2009), available at

<http://www.adrtoolbox.com/wp-content/uploads/2010/03/Trends-in-Litigating-Arbitration-Using-Motions-to-Compel-Arbitration-and-Motions-to-Vacate-Arbitration-Awards.pdf>.

- *Litigating Arbitration: A 2007 Texas Arbitration Review*, 60 BAYLOR LAW REVIEW 613 (2008) (with Audrey Lynn Maness), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Litigating-Arbitration-A-2007-Texas-Arbitration-Review-BaylorLR.pdf>.
- *Fifth Circuit Survey Articles, Alternative Dispute Resolution: Litigating Arbitration Slows as Mediation Becomes More Popular*, 43 TEXAS TECH LAW REVIEW 757 (2011) (with Audrey Lynn Maness and Philip J. Loree), available at <http://www.adrtoolbox.com/wp-content/uploads/2011/04/Alternative-Dispute-Resolution-Litigation-Arbitration-Slows-as-Mediation-Becomes-More-Popular-2011.pdf>.
- *Fifth Circuit Survey Articles, Still Litigating Arbitration in the Fifth Circuit, But Less Often*, 42 TEXAS TECH LAW REVIEW 551 (2010), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Philbin-Maness-FINAL1.pdf>.
- *Fifth Circuit Survey Articles, Litigating Alternative Dispute Resolution in the Fifth Circuit*, 41 TEXAS TECH LAW REVIEW 739 (2009) (with Audrey Lynn Maness), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Litigating-Alternative-Dispute-Resolution-in-the-Fifth-Circuit-20091.pdf>.
- *Fifth Circuit Survey Articles, Alternative Dispute Resolution*, 40 TEXAS TECH LAW REVIEW 445 (2008) (with Audrey Lynn Maness), available at <http://www.adrtoolbox.com/wp-content/uploads/2010/03/Fifth-Circuit-Survey-Articles-Alternative-Dispute-Resolution.pdf>.
- *Chief Justice Rehnquist's First Bout With Classroom Instruction*, 58 OKLAHOMA BAR JOURNAL 817 (1986) (with Pamela J. Minetto).
- *Off the Bench: While Senators Debated His Future, William Rehnquist Became a Laid-Back Professor in Malibu*, LOS ANGELES TIMES MAGAZINE, Nov. 2, 1986, at 8 (with Pamela J. Minetto).
- *Christmas Gifts to Employees: Ham It Up And You May Come Out Looking Like a Turkey*, UNITED STATES LAW NEWS, Dec. 1, 1986, STUDENT SECTION at 11 (with Charles W. Ryan).

## PRESENTATIONS

- Concession Rates: Offers and Counter-offers (National Academy of Distinguished Neutrals 2011)
- Deal or No Deal: Leveraging Information to Overcome Psychological Barriers to Efficient Deals (National Academy of Distinguished Neutrals 2011)
- Preventing Bad Settlement Decisions and Impasse: Using Brain Science, Game Theory, Animated Communication, and Micro-Interventions (Pepperdine Professional Skills Program 2011)
- Moderator, Tactical Interventions in Mediation (ABA Dispute Resolution Teleconference 2011)
- Negotiation Skills (Texas Bar Essentials of Business Law Course 2011)
- Using "Picture Power" In Settlement Negotiations to Enhance Communications and Reduce Decision Making Mistakes (ABA Dispute Resolution Annual Conference in Denver 2011)
- Mediation Roundtable of Daily Ethical Issues Faced by Mediators (Association of Attorney-Mediators 2011)
- Co-Chair, Magic of Conflict Resolution (Texas Association of Mediators 2011)
- Course Director, Tactical Interventions in Mediation: Preventing Bad Settlement Decisions and Impasse Minute by Minute (State Bar of Texas 2011)
- Music to My Ears: A Mediation Program (International Academy of Mediators 2010)
- Advanced Mediation Training (American College of Civil Trial Mediators 2010)
- Administrative Law Course (UT CLE 2010)
- Using "Picture Power" in Settlement Negotiation (Dallas Bar Association 2010)
- Bench Motions & Trials II (San Antonio Bar Association 2010)

- Securities Arbitration & Mediation Hot Topics (City Bar of New York 2010)
- Using Game Theory to Improve Negotiating Results (Akin Gump nationwide 2010)
- Southern California Mediation Association (2009)
- Texas Mediator Credentialing Association (2009)
- American Society of Women Accountants (San Antonio Chapter 2009)
- Advanced Decision Analysis Class with Marjorie Aaron, University of Cincinnati School of Law (2009)
- Mediation Course, St. Mary's University School of Law (Spring & Fall 2009)
- Association of Attorney-Mediators (San Antonio 2009)
- Texas Attorney General In-house Training Course (Austin 2009)
- Bench Motions & Trials – Bexar County Style, San Antonio Bar Association (San Antonio 2009)
- Litigation Section of the American Bar Association (Atlanta 2009)
- Dispute Resolution Section of the American Bar Association (New York 2009)
- San Antonio Legal Secretaries Association (San Antonio 2009)
- Technology Panel, Ohio State Journal on Dispute Resolution (Columbus 2009)
- Dispute Resolution Symposium, Texas Wesleyan Law Review (Fort Worth 2009)
- Employment Disputes Class; Straus Institute for Dispute Resolution at Pepperdine School of Law (2008, 2010)
- The Conference Board: Council of Chief Legal Officers (Washington 2008)
- Manufacturers Alliance / MAPI Law Council (Chicago 2008)
- Basic Mediation Training for the Bexar County and Hill Country Dispute Resolution Centers (2008)
- Association of Attorney-Mediators (Austin 2008)
- International Association of Heat and Frost Insulators and Allied Workers (with C. Richard Barnes and Associates; Las Vegas 2008)
- San Antonio Family Lawyers Association (San Antonio 2008)
- San Antonio Bar Association Litigation Section (San Antonio 2008)
- Dispute Resolution Section of the American Bar Association (Seattle 2008)
- National Electrical Contractors Association (with C. Richard Barnes and Associates; New Orleans 2008)

## EDUCATION

- LL.M. in Dispute Resolution (2007), Pepperdine University School of Law (Straus Institute)
  - CALI awards for (1) Negotiation and Settlement Advocacy; (2) Commercial and International Dispute Resolution, and (3) Selected Issues in Dispute Resolution (Labor Disputes)
- MBA (Executive Program, 2001), University of Texas at San Antonio
  - Dean's Graduate Student Honor Roll (1999 – 2001); Beta Gamma Sigma and Omicron Delta Kappa
- JD (1987), Pepperdine University School of Law
  - Pepperdine Law Review (1985 – 87); Moot Court Board (1986 – 87); Margaret Martin Brock Scholar (1986 – 87); Teaching Assistant – Writing (1986 – 87)
  - American Jurisprudence Awards for (1) Corporations and (2) Agency and Partnerships
- BA, Business Administration (1984), Trinity University
  - Intern, The White House (1984), United States Senate (Don Nickles, 1983), University President (1982 – 83); Chief Justice, Student Judicial Board (1983 – 84); Teaching Assistant – Writing Lab (1983 – 84)

## COMMUNITY ACTIVITIES

- Trinity University: Chair of the Associates Program (2009 – present), Alumni President and Ex-Officio Member of the Board of Trustees (1993 – 1995), Board of Visitors (2004 – 2006; 2009 – present), Business Advisory Council (1999 – present)
- Rotary Club of San Antonio (2005 – present): Director (2008 – 2009), Secretary – Treasurer (2009 – 2010), Sergeant-at-Arms committee (2007 – present), Trinity Rotaract committee (2008 – present)
- First Presbyterian Church of San Antonio (1987 – present): Elder (2007 – 2010), Welcoming and Belonging Committee (2007 – 2010; chair 2009 – 2010), Benevolence Oversight Committee (2008 – present), Usher (1998 – present), Stewardship and Finance Committee (1989 – 90)
- William S. Sessions American Inn of Court (1990 – present): Vice-President (2010 – 2011); Treasurer (2009 – 2010); Secretary (2008 – 2009)
- American Inns of Court Foundation: National CMS Advisory Board (2008 – present)
- Goodwill Industries of San Antonio: Advisory Council (2007 – 2010)
- Leadership San Antonio XXIX (2003 – 2004)
- Judicial Conference of the Fifth Federal Circuit: Host Committee (1990 & 1994)
- Adjunct Professor, Pepperdine University School of Law (2008 – present)
- Guest Lecturer, Trinity University Business Department (various), St. Mary's University School of Law (2009), University of Cincinnati School of Law (Advanced Decision Analysis 2009)
- Frequent Volunteer Mediator, U.S. District Court for the Western District of Texas, Bexar County Dispute Resolution Center, Hill County Dispute Resolution Center; Better Business Bureau, and others

## ADMISSIONS AND PANELS

- CPR's Panels of Distinguished Neutrals (2007 – present)
- Conflict Solutions of Texas (2008 – present)
- American Health Lawyers Association (2011 – present)
- Resolute Systems (2010 – present)
- Mediation Works Incorporated (MWI) (2009 – present)
- National Arbitration and Mediation, Inc. (NAM) (2009 – present)
- Supreme Court of the United States (1991 – present)
- United States Courts of Appeal for the Fifth (1988 – present) and Tenth (1990 – present) Circuits
- United States District Courts for the Northern (1989 – present), Southern (1989 – present; ADR panel: 2009 – present), Eastern (1990 – present) and Western (1988 – present; ADR panel: 2008 – present) Districts of Texas
- All State Courts of Texas (1988 – present)

## MEMBERSHIPS

- American Bar Association: Dispute Resolution (2006 – present; Negotiation Committee Chair 2009 – present); Litigation (1987 – present); Business Law (2007 – present)
- State Bar of Texas (1988 – present): Alternative Dispute Resolution (2006 – present; Section Council 2009 – 12); Litigation (1988 – present), Antitrust and Business Litigation; Computer and Technology; Corporate Counsel; Family Law
- International Mediation Institute (IMI) Certified Mediator (2009 – present)
- Credentialed Distinguished Mediator, Texas Mediator Credentialing Association (2007 – present)

- Mediate.com: Senior Mediator (2008 – present); Certified Mediator (2009 – present)
- Association of Attorney – Mediators (2007 – present)
- Texas Association of Mediators (2007 – present)
- Global Collaborative Law Council (2009 – present)
- Society for Empirical Legal Studies (2008 – present)
- Decision Analysis Society (2008 – present)
- Fellow of the College of the State Bar of Texas (1997 – present)
- Life Fellow of the Texas Bar Foundation (2002 – present)
- Life Fellow of the San Antonio Bar Foundation (2007 – present)
- Fellow of the American Bar Foundation (2009 – present)
- The Texas General Counsel Forum (2002 – 2006)
- Federal Communications Bar Association (1997 – present)
- Bar Association of the Fifth Federal Circuit (1988 – present)
- San Antonio Bar Association (1988 – present)

## **BUSINESS AND LEGAL EXPERIENCE**

- Twenty-plus years' experience representing public and private business entities and individuals in various matters, first as an associate and partner in *Bar Register* law firms and as a senior manager in companies involved in the communications, technology, software, and Internet industries, and as a neutral with business and legal experience, including:
  - President; Chief Operating Officer; General Counsel, Billing Concepts, Inc., affiliates and predecessors (legal functions; strategic direction and day-to-day operations; doubled operating income in three years)
  - Vice President and Associate General Counsel, USLD Communications Corp. (through mergers with LCI Communications and Qwest Communications)
  - Partner, Law Firms of Wheatley, Campagnolo & Sessions, L.L.P. and Campagnolo & Philbin, L.C.
  - Associate, Law Firm of Oppenheimer, Rosenberg, Kelleher & Wheatley, Inc.
- Substantial experience handling disputes in various courts and other dispute resolution forums as well as negotiating and drafting a variety of contracts, license agreements, and corporate documents in many areas of commercial and general civil law, including accounting, antitrust, banking, bill processing, civil rights, commercial, communications, construction, consumer, contract, corporate and organizational, employment, entertainment, environmental, family, insurance coverage, intellectual property, international, partnership dissolution, personal injury/death, property damage, public policy, real estate, regulatory, securities, software licensing and technology law, and business and personal torts
- Martindale-Hubbell® rating: AV (1999 – present)
- Listed in THE INTERNATIONAL WHO'S WHO OF COMMERCIAL MEDIATION (inception in 2011 – present)
- Listed in THE BEST LAWYERS IN AMERICA® (Alternative Dispute Resolution, 2007 – present)
- Listed in The BEST LAWYERS IN SAN ANTONIO (Alternative Dispute Resolution, 2008 – present)
- Listed in the BAR REGISTER OF PREEMINENT LAWYERS (2007 – Present)
- Listed in the U.S. NEWS AND BEST LAWYERS "BEST LAW FIRM" survey (inception in 2010 – present)

## **PUBLISHED OPINIONS WITH SUBSTANTIAL INVOLVEMENT**

- *L.U.L.A.C. v. Clements, et al and Rickoff, et al.*, 999 F.2d 831 (5<sup>th</sup> Cir. 1993), *cert denied* 114 S.Ct. 878 (1994), *same case earlier*, 111 S.Ct. 2376 (1991) (challenge to Texas' at-large system of electing state district judges in metropolitan counties; local intervenors).
- *City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762 (Tex. 1991) (orig. proceeding), and the related case of *Vamarie v. The Honorable T. Armour Ball, Judge, Probate Court No. 1*, 793 S.W.2d 749 (Tex. App. – San Antonio 1990) (orig. proceeding) (open meetings challenge arising from a condemnation case).
- *Metropolitan Life Insurance Company v. La Mansion Hotels & Resorts, Ltd.*, 762 S.W.2d 646 (Tex. App. – San Antonio 1988, writ *dism'd w.o.j.*) (lender liability action).
- *University National Bank v. Ernst & Whinney*, 773 S.W.2d 707 (Tex. App. – San Antonio 1989, no writ) (accounting malpractice action).

## PERSONAL

- Born in Oklahoma City on January 25, 1962; married to Mary C. (“Micki”) McGee Philbin; one daughter: Mary Katherine (“Kate”) Philbin